

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE: DESLORATADINE PATENT
LITIGATION

MDL No. 1851
Civil Action No. 3:07-cv-03930-MLC-TJB

SCHERING CORPORATION,
Plaintiff,

v.

ZYDUS PHARMACEUTICALS, USA, INC.,
SANDOZ INC., MYLAN
PHARMACEUTICALS INC., ORGENUS
PHARMA, INC., ORCHID CHEMICALS &
PHARMACEUTICALS, LTD., L. PERRIGO
CO., PERRIGO CO., GLENMARK
PHARMACEUTICALS INC., USA,
GLENMARK PHARMACEUTICALS, LTD.,
GEOPHARMA, INC., BELCHER
PHARMACEUTICALS, INC., LUPIN
PHARMACEUTICALS INC., LUPIN LTD.,
RANBAXY INC., RANBAXY
LABORATORIES LTD., DR. REDDY'S
LABORATORIES, INC., DR. REDDY'S
LABORATORIES, LTD., CARACO
PHARMACEUTICAL LABORATORIES,
LTD., SUN PHARMACEUTICAL
INDUSTRIES LTD., WATSON
PHARMACEUTICALS, INC., and WATSON
LABORATORIES, INC.,

Defendants.

RECEIVED

DEC - 9 2008

AT 8:30 _____ M
WILLIAM T. WALSH
CLERK

Civil Action No. 06-04715-MLC-TJB

STIPULATION AND ORDER

The Court, upon the consent and request of Plaintiff Schering Corporation ("Schering") and Defendants L. Perrigo Co. and Perrigo Co. (collectively, "Perrigo"), hereby acknowledges the following Stipulation and issues the following Order.

STIPULATION

1. This Court has subject matter jurisdiction over this patent infringement action (the "Action") and personal jurisdiction over Schering and Perrigo. Venue is proper in this Court as to Schering and Perrigo.
2. In this Action, Schering has charged Perrigo with infringement of United States Patent No. 6,100,274 ("the '274 Patent") in connection with Perrigo's submission of Abbreviated New Drug Application ("ANDA") No. 78-361 directed to generic tablets containing 5 milligrams of desloratadine per tablet to the U.S. Food and Drug Administration ("FDA").
3. In response to Schering's charges of patent infringement, Perrigo has alleged certain defenses and counterclaims, including that the '274 Patent is invalid and not infringed by the generic tablet product containing 5 milligrams of desloratadine per tablet that is the subject of ANDA No. 78-361. No decision has been obtained by either party from this Court regarding these charges of infringement or these defenses and counterclaims.
4. Perrigo has not rebutted the statutory presumption that the '274 Patent is valid and enforceable in this Action. This admission is without prejudice to Perrigo's defenses and counterclaims that the '274 patent is invalid.
5. Perrigo admits that the submission of ANDA No. 78-361 to the FDA for the purpose of obtaining regulatory approval to engage in the commercial manufacture, use and/or sale of generic tablets containing 5 milligrams of desloratadine per tablet within the United States before the expiration of the '274 Patent was a technical act of infringement of that patent under 35 U.S.C. § 271(e)(2)(A). This admission is without prejudice to Perrigo's defenses

and counterclaims that the '274 patent is invalid and/or that the product described by ANDA No. 78-361 does not infringe that patent.

6. Perrigo has agreed that each of the defenses and counterclaims set forth in the Answer And Counterclaim Of Defendants L. Perrigo Company And Perrigo Company Perrigo Defendants' Answer To Amended Complaint, including the allegations and averments contained therein, should be dismissed, without prejudice.

ORDER

Accordingly, pursuant to the above Stipulation, and upon the consent and request of Schering and Perrigo, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. The filing of ANDA No. 78-361 was a technical act of infringement of the '274 Patent under 35 U.S.C. § 271(e)(2)(A). No decision of the Court has been obtained by either party regarding the presumptive validity of the '274 patent and/or whether the product described by ANDA No. 78-361 infringes that patent.

2. Perrigo's defenses and counterclaims with respect to the '274 Patent are hereby dismissed, without prejudice.

3. Perrigo, its officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby enjoined from manufacturing, using, offering to sell or selling within the United States, or importing into the United States, the generic tablet product containing 5 milligrams of desloratadine per tablet that is the subject of ANDA No. 78-361 during the life of the '274 Patent, including any extensions and pediatric exclusivities, absent a license agreement or other authorization by Schering, unless all of the claims of the '274 Patent

are found invalid or unenforceable by a court decision from which no appeal has been or can be taken, other than a petition for a writ of certiorari to the U.S. Supreme Court.

4. Schering and Perrigo each expressly waives any right to appeal or otherwise move for relief from this Stipulation And Order.


5. This Court retains jurisdiction over Schering and Perrigo for purposes of enforcing this Stipulation And Order.

6. This Stipulation And Order shall finally resolve this Action between Schering and Perrigo. Each party shall bear its own fees and costs in connection with this Action, including attorney fees.

7. The Clerk of the Court is directed to enter this Stipulation And Order forthwith.

SO ORDERED:

This 9th day of Dec., 2008



HONORABLE MARY L. COOPER
UNITED STATES DISTRICT JUDGE

We hereby request and consent to the entry of the foregoing Stipulation And

Order.

For Plaintiff Schering Corporation:

s/ Richard Hernandez
William J. O'Shaughnessy
woshaughnessy@mccarter.com
Gita F. Rothschild
grothschild@mccarter.com
Richard Hernandez
rhernandez@mccarter.com
McCARTER & ENGLISH, LLP
Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07102
Telephone: (973) 622-4444
Facsimile: (973) 624-7070

John M. Desmarais
jdesmarais@kirkland.com
Peter J. Armenio
parmenio@kirkland.com
Gerald J. Flattmann, Jr.
gflattmann@kirkland.com
Anne S. Toker
atoker@kirkland.com
Admitted *pro hac vice*
KIRKLAND & ELLIS LLP
Citigroup Center
153 East 53rd Street
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

For Defendants L. Perrigo Co. and Perrigo Co.

s/ Arnold B. Calmann

Arnold B. Calmann

acalmann@saiber.com

Jeffrey Soos

jsoos@saiber.com

Katherine A. Escanlar

kescanlar@saiber.com

SAIBER LLC

One Gateway Center, 13th Floor

Newark, New Jersey 07102-5311

Phone: (973) 622-3333

William A. Rakoczy

wrakoczy@rmmslegal.com

Paul J. Molino

paul@rmmslegal.com

Deanne M. Mazzochi

dmazzochi@rmmslegal.com

Amy D. Brody

abrody@rmmslegal.com

Alice L. Riechers

ariechers@rmmslegal.com

Neil A. Benchell

nbenchell@rmmslegal.com

Admitted *pro hac vice*

RAKOCZY MOLINO MAZZOCHI SIWIK

LLP

6 West Hubbard Street, Suite 500

Chicago, Illinois 60610

Phone: (312) 222-6301